



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Lawrence and Susan Levine
7511 Porto Vechhio Place
Delray Beach, FL 33446

Re: Septic System Approval #CA1998008139
Salem, New Hampshire

**NOTICE OF PROPOSED
LICENSE ACTION
No. 04-003**

March 3, 2004

I. INTRODUCTION

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division ("DES") to Lawrence and Susan Levine pursuant to RSA 541-A:30 and RSA 485-A:29 and Env-Ws 1004.19. DES is proposing to suspend the septic system construction approval CA1998008139 held by Lawrence and Susan Levine, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Lawrence and Susan Levine are individuals having a mailing address of 7511 Porto Vechhio Place, Delray Beach, Florida.

III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. Pursuant to Env-Ws 1004.19 (b) "If, after the issuance of an approval, the department receives information that indicates that the information upon which the approval was based was not true and complete or was misleading, the department shall notify the permittee of the date, time and place of a hearing at which the permittee shall be given an opportunity to show cause why the approval should not be revoked, which notice and hearing shall be in accordance with RSA 541-A:31."
3. On April 8, 1998, DES issued subsurface sewage system construction approval number CA1998008139 dated April 30, 1998 ("the Permit") to Lawrence and Susan Levine, to allow the

construction and installation of a septic system on their property located at 17 Nowell Court, Salem, New Hampshire, more particularly described in Town of Salem tax maps as Map 21, Lot 5766 ("the Property").

4. RSA 485-A:30-a requires that applicants for septic systems that require encroachment waivers notify all abutters of the request for encroachment waiver. The notification must include:

- a. The name and address of the property owner.
- b. Identification of the property for which an encroachment waiver is being requested, including tax map and lot numbers.
- c. Names of abutters, together with applicable tax map and lot numbers.

5. Env-Ws 1003.13 requires that applicants for septic systems that require encroachment waivers must notify all abutters of the request for such waivers, pursuant to RSA 485-A:30-a.

6. Env-Ws 1002.26 defines "encroachment waiver" as a waiver of the design specification rules of Env-Ws 1000 et seq. which, if granted, would limit the ability of an owner of an abutting property to fully use his property for purposes of development. For purposes of this definition, "development" includes changes or additions to existing structures as well as construction of new structures, whether commercial or non-commercial.

7. Env-Ws 1004.19(a) states that information provided to justify the issuance of an approval, including a request for encroachment waiver, is assumed to be true and accurate.

8. RSA 485-A:32, I and II authorize municipalities to review septic system applications for compliance with local ordinances prior to submitting those applications to DES for approval. The Town of Salem is listed as a "prior approval" town, and employs Mr. Joseph Chamberlain to review septic system plans for accuracy prior to submission of those plans affecting failed septic systems to DES for review and approval.

9. Joseph Chamberlain is an authorized agent of DES with authority to review, inspect and approve plans submitted for the construction of septic systems in the Town of Salem. Mr. Chamberlain is fully knowledgeable about the requirements for approval of individual septic systems.

10. On February 12, 1998, Meisner Brem Corporation ("Meisner") submitted an application for replacement of a septic system located on the Property to DES for review and approval. The request was to replace a failed septic system with a new system.

11. The application included a request for an encroachment waiver on property owned by Sidney Wolk, located at 15 Nowell Court, identified on Town of Salem Tax Map 21, Lot 5765. The encroachment waiver was signed by Mr. Sidney Wolk, and dated February 27, 1998

12. Based on the information provided by the applicant, including additional information requested by DES, DES approved the application on April 8, 1998.
13. Subsequent to issuance of the approval, DES received information that demonstrates that the Meisner application contained significant errors.
14. The Meisner application identified only one abutting property owner, Sidney Wolk. In fact there are two abutting property owners: Sidney Wolk, and Phillip and Georgette Smith.
15. The Meisner application incorrectly identified Mr. Wolk as the owner of the property that would be burdened by the encroachment waiver. In fact, the property burdened by the encroachment is owned by the Smiths.
16. The Meisner application incorrectly listed the tax map and lot number of the burdened property as Salem Tax Map 21, Lot 5765. The correct tax map and lot number for the burdened property is Map 21, Lot 5768.
17. Based on information received from the Smiths, DES notified the Town of Salem of this error shortly after the application was submitted to the Town for review pursuant to RSA 485-A:32, I and II.
18. According to information provided by the Smiths, Town officials promised them that the application would be corrected to reflect their ownership of the burdened property prior to submission of the plans to DES for review and approval.
19. Due to the failure to correct the application prior to submission to DES, the Smiths were not afforded an opportunity to object to issuance of the encroachment waiver prior to DES approval of the plan and granting of the encroachment waiver.
20. DES has received a copy of a lot line adjustment plan dated January 3, 1995, developed for the Smith's property in Salem by Meisner. The Smith's plan indicates that Meisner knew that the Smiths owned the property burdened by the proposed encroachment waiver prior to submission of the Levine plan to the Town of Salem and DES.
21. On or about January 10, 2004, DES received a copy of a certified plot plan (the "Meisner Plan") dated May 21, 1998, developed by Meisner for the Levines. On the Meisner Plan, the Smiths are correctly identified as the owners of the property burdened by the encroachment waiver.
22. On or about April 10, 2003, DES received information indicating that the size of the lot as stated on the Meisner Plan is incorrect, and that the location of a previous septic system on the Levine lot is also incorrect.

23. On December 1, 2003, DES received amended plans from Meisner, seeking to cure the defects in the original application. DES believes that the amended Meisner Plans continue to reflect inaccurate information regarding lot size, descriptions of the property, nature of the use of the property (seasonal or year round) and location of the former septic system on the Property.

24. Based on the above facts, DES believes that it has received information indicating that the information upon which it based its approval of the Permit was not true and complete or was misleading.

IV. VIOLATIONS ALLEGED

1. Lawrence and Susan Levine have submitted false or misleading information to DES for the purpose of obtaining a permit from DES to replace a failed septic system on the Property.

V. PROPOSED ACTION

1. Based on the violations identified in IV, 1 above, DES proposes to suspend the Permit until it thoroughly reviews all information submitted and determines whether, if it had received accurate information at the time of the original application, it would have approved the Permit.


VI. HEARING, REQUIRED RESPONSE

The Levines have the right to a hearing to contest these allegations before the proposed license action is taken. A hearing on this matter has been scheduled for **Monday, May 17, 2004**, at 1:00 p.m. in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, the Levines are required to respond to this notice.** Please respond **no later than April 17, 2004**, using the enclosed colored form as follows:

1. If the Levines plan to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If the Levines choose to waive the hearing, please sign the waiver (lower portion) and return it to the DES Legal Unit. If the Levines waive the hearing, DES is prepared to revoke the Permit.
3. RSA 541-A:31, III(e) provides that the Levines have the right to have an attorney present to represent the Levines at the Levines' expense. If the Levines choose to be represented by an attorney, the attorney must file an appearance and submit proposed findings of fact to the person conducting the hearing.
4. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which the Levines and any witnesses the Levines may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination.

5. **If the Levines wish to have a hearing but are unable to attend as scheduled, the** Levines must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If the Levines do not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in the Levines' absence in accordance with Env C 204.09.
6. If the Permit is an occupational license, under RSA 541-A:31, III(f) the Levines have the right to request DES to provide a certified shorthand court reporter at the Levines' expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Anyone having questions regarding this matter should contact Richard J. de Seve, Subsurface Systems Bureau Compliance Supervisor, at 271-3442.

COPY

Harry T. Stewart, P.E., Director
Water Division

cc: Board of Selectmen, Town of Salem
Gretchen Rule, DES Legal Unit
William E. Evans, P.E., Administrator, DES/SSB
Richard J. de Seve, WD
Joseph Chamberlain, Town of Salem
K. Meisner, Meisner Brem, Corporation
Phillip and Georgette Smith

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**LAWRENCE and SUSAN LEVINE
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN April 17, 2004

APPEARANCE On behalf of Lawrence and Susan Levine.

_____ I will attend the hearing scheduled for Monday, May 17, 2004 at 1:00 p.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

WAIVER OF HEARING On behalf of Lawrence and Susan Levine.

_____ I certify that I understand my right to a hearing regarding the imposition of the Notice of Permit Revocation and that I hereby waive those rights.

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone Number: _____

**RETURN THIS PAGE ONLY TO:
Michael Sclafani, Legal Assistant
Department of Environmental Services ~ Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**